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SUBJECT: CAMBODIAN GOVERNMENT AND NGOS BEGIN EFFORT TO FORM
A NATIONAL HUMAN RIGHTS COMMISSION

¶11. (SBU) Summary. Prime Minister Hun Sen opened a two-day meeting in Siem Riep September 26-27 by asking NGOs to draft legislation to create a national human rights commission in one year. Members of civil society, Cambodian lawmakers, government officials and foreign observers participated in the debate over the proposed commission's mandate. The NGOs left the conference skeptical about the RGC's motivations as well as divided over key points. Nevertheless, they are willing to attempt to craft an impartial, transparent, yet empowered new body. End Summary.

PM Challenges NGOs to Establish New Commission

¶12. (U) From September 26-27, Kem Sokha's Cambodia Center for Human Rights (CCHR) sponsored a conference in Siem Reap aimed at evaluating the potential for Cambodia to become the fifth ASEAN country to establish a national human rights commission. Prime Minister Hun Sen began the meeting by asking NGOs to draft a law to establish the National Human Rights Commission within six months. He then asked members of the National Assembly present at the meeting to help pass the legislation in six months so the new body could be up and running in one year's time. In response to suspicions regarding the RGC's intent, the PM stressed that respect for human rights can only be fostered in a stable and peaceful environment. The PM rhetorically argued that such a body could not have been established during the Khmer Rouge era, during the 1980s, or in today's Iraq. Hun Sen thought his government should be thanked for bringing about the conditions that allowed such a commission to be formed in Cambodia.

Beginning of the Debate

¶13. (U) Om Yentieng, Chairperson of the Cambodian Human Rights Committee as well as an adviser to the Prime Minister, stressed that the new institution would not replace any of the four existing human rights bodies: the National Assembly's Human Rights Commission, the Prime Minister's Cambodian Human Rights Committee, the Senate Human Rights Committee, or the NGO-led Cambodian Human Rights Action Committee (CHRAC). He reiterated that the new institution will be established by a law to be passed by the National Assembly and the law should be in accordance with the Cambodian Constitution and the Paris Principles. He repeated the Prime Minister's one-year timetable, noting the laws of the four existing ASEAN human rights institutions in Thailand, Malaysia, Indonesia, and the Philippines have already been translated into Khmer. LICADHO's Kek Galabru stressed that the new human rights commission should have

political independence, cooperate with existing state institutions, be accessible to the public, and have pluralistic representation while being transparent and effective. She wanted commissioners to be able to issue arrest warrants but not function as a court, be able to visit prisons, and have a sufficient budget and resources to do their jobs.

14. (U) Thun Saray of ADHOC envisions a commission that is enshrined in the Cambodian Constitution, has members who are not members of any political party, and has an autonomous budget. He also warned that it was imperative that judicial reform accompany the establishment of the national human rights institution. Pen Panha, the Chairperson of the Human Rights Commission of the National Assembly, stated that a constitutional amendment is not necessary because the preface to the Constitution guarantees human rights.

Reports from Other ASEAN Human Rights Commissions

15. (U) Dr. Petcharamesree, an expert on the Thai commission, stated that the commission was enshrined in the constitution of Thailand, was still operating despite the recent coup, and included 11 members who have six-year mandates. In her opinion, the major problems with the Thai commission are that it has no power to summon witnesses and its budget is part of the national budget (making it subject to possible Parliamentary interference). Mr. Darusman, a member of the Indonesian human rights commission, noted that the establishment of a human rights commission in Indonesia has broken a climate of impunity by the state bureaucracy and the military. Human rights violations can be resolved in Indonesian courts and a human rights policy has become engrained in the government.

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16. (U) Mr. Subramaniam, a member of the Malaysian human rights commission, explained that the Malaysian commission is enshrined in an act of parliament, not the constitution; the commission in Malaysia is organized on a thematic basis with 17 commissioners divided into four areas: education, investigation and complaints, economics, and law and reform. He asserted that he was very proud of the work that the commission had done incorporating human rights into education in Malaysia. He also noted that the commission in Malaysia has the right to call anyone in for questioning. Dr. Valera-Quisumbing, Chairperson of the Human Right Commission of the Philippines, stated that their commission is enshrined in their constitution with five commissioners who serve seven-year terms. She said the commission has the power to investigate violations upon complaint or on its own initiative, and has the power to call domestic and overseas Filipinos for questioning. She also indicated that the results of its investigations must go to courts and that her commission has created centers of excellence in children's rights, women's rights and village rights.

17. (U) Stephen Clark, project manager for the Asia-Pacific Forum, and Ms. Marianne Haugaard, from the Office of the High Commissioner for Human Rights' Geneva office, spoke about the support that their organizations can provide in helping establish a national human rights institution. They discussed the Paris Principles on which such a body should be based. They emphasized that such a body must be independent and transparent. They also stated that establishing such a body is not an end in itself but a step in a long-term battle to respect human rights.

Constitutional Amendment or Organic Law?

18. (U) Participants later divided into four groups to discuss their ideas on the establishment of a human rights commission. The groups agreed that commissioners should be a

diverse group, independent from all political parties, and should have diverse funding sources (the national budget as well as foreign donors). The participants also agreed that the commission should have broad responsibilities in the areas of education and investigations. Agreement was also reached that commissioners should have immunity during their tenure.

¶19. (U) NGOs and government officials disagreed, however, on the commission having the power to protect witnesses and their families. Disagreement broke out between the members of civil society and the government regarding the commission's legal basis: should it be a part of the Cambodian Constitution or part of an organic law? Members also disagreed over the length of a term for commission members as well as if the commission should set up a special human rights court or work within the existing legal system. LICADHO pressed to have the assets of commission members and their families disclosed.

¶10. (U) Despite several areas of disagreement, those assembled resolved to establish a national human rights commission based on the Paris Principles. The delegates also agreed to create a joint working group with representatives from government and NGOs that would engage with other members of civil society to draft the necessary laws for the commission. However, NGOs continued to press for any legislation to be included in the Constitution arguing that the current government can rescind legislation at any time because it holds a majority in the National Assembly. Om Yentieng argued that amending the Constitution was not possible in a timely manner because only the King, Prime Minister, President of the National Assembly, or President of the Senate can propose amendments. By asking civil society to draft the legislation for the national human rights body. Om Yentieng said the PM had shown "the necessary political will" and asked the NGOs to trust the PM about the future of this body. The PM's advisor recommended that an expert on the Paris Principles be brought in to educate the members of the working group charged with drafting the law. He also recommended studying the four existing ASEAN commissions and India's commission because it has prosecutorial power.

Comment

¶11. (SBU) Since the end of the conference, the heads of five NGOs - CCHR, LICADHO, ADHOC, Cambodian Defenders'

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Project and Star Kampuchea - have been named as the civil society members of the joint working group to establish the new body. It must be noted that this group is made up of only one lawyer. The government, however has not announced who will be its representatives for this joint working group. NGO leaders remain hesitant over the prospect of joining the proposed commission once it is established; some have denied any intentions to become commissioners while others have adopted a wait-and-see approach. Though many government officials and NGOs believe meeting the PM's one-year deadline will be difficult, crafting this legislation at a deliberate rather than a rapid pace may be desirable in this instance. The RGC's excuse that such a commission cannot be embedded in the country's constitution due to the lengthy time to pass a constitutional amendment is a dodge; the RGC passed an amendment putting in place a 50 percent plus one majority in the National Assembly in less than two month's time when it was convenient for the RGC to do so for political purposes. The local UN Human Rights Office notes that even if the law establishing a national human rights commission is enacted, such a body cannot fulfill its mandate in a vacuum; other institutions and laws must exist and the weakness of the Cambodian government is an impediment. We worry too, that the PM wants to establish a national commission to bolster his argument that the UN Human Rights Office should be closed. End Comment.

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